HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 338 of 2003 (SS)

Sri Bhagwan Swaroop vs. State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 10.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 338 of 2003 (SS)

Sri Bhagwan Swaroop son of Sri Ghasi Ram
Mohalla Pakka Kot, Kashipur,
District Udham Singh Nagar. ……..….... Petitioner

Versus

State of Uttaranchal & others …… Respondents

Dated: 10.11.2003

Hon'ble Rajesh Tandon, J.

Rule. Respondents waive service.

By the present writ petition the petitioners has prayed for the issue of a writ, order or direction in the nature of certiorari for quashing the order of suspension dated 19.5.2003, annexure-1 to the writ petition passed by the District Magistrate, Udham Singh Nagar.

Brief facts giving rise to the present writ petition are that the petitioner was initially appointed as A.W.Bn. (Assistant Wasil Waquil Nawis) on 1.5.1968. Thereafter he was promoted on the post of Judicial Assistant on 20.10.1997 in the Collectorate, Udham Singh Nagar. According to the petitioner the service record of the petitioner

is unblemished and his name is figured at serial no.33 in the seniority list. The petitioner has alleged that one Sri Mohan Lal Arya respondent no.3, whose name is figured at Sl. No. 38 in the seniority list has been promoted to the post of Administrative Officer.

The petitioner has challenged the said order of promotion before the Administrative Tribunal in Claim Petition No. 249 of 2002 and due to this respondent no.3 Sri Mohan Lal Arya having annoyed with the petitioner. According to the petitioner respondent no.3 is trying to act mischievously against the petitioner.

The petitioner was suspended vide order dated 19.5.2003 passed by the District Magistrate, Udham Singh Nagar. The charges against the petitioner are that the petitioner has deliberately presented the file of case crime No. 355 of 2002 before the District Magistrate with delay on 2.5.2003. The second charge against the petitioner is that he presented a draft of Rs.2.50 lakhs to the Executive Engineer, P.W.D. Khatima with unnecessary delay.

The petitioner has alleged that the suspension order has been passed without application of mind. Counter affidavit has been filed by the respondents. Respondents no.1 and 2 in para no.5 of their counter affidavit, has stated as under:

> *5. That in reply to the contents of para 5 of the writ petition are not admitted and denied as incorrect. It is submitted*

that as replied in the preceding paras of this counter affidavit due to unsatisfactory performance given by the petitioner, the petitioner was suspended by the then District Magistrate, Nainital on 14.9.1981 and for that he had been punished as under:

A- Restrained three annual increments, which will also, affected the further annual salary increment.

B- No posting in any court of perform duty.

C- Adverse entry made in the corrector role with integrity doubtful.

Apart from that on 4.7.1998 an adverse entry had been made in the character role of the petitioner. Further on 27.7.1999 adverse entry had been made in the character role of the petitioner. For kind perusal of the Hon'ble Court, the copies of the order dated 14.9.1981, 4.7.1998 and 27.7.1999 are being filed herewith and marked as Annexure 1,2, & 3 to this counter affidavit."

A perusal of annexure-1 to the writ petition shows that suspension order was passed not on account of the averments made in paragraph 5 aforesaid but on some other reasons. Suspension order was passed on 19.5.2003 but inquiry has not yet been completed.

The petitioner has stated that he has made a representation on 25.6.2003 to the District Magistrate, Udham Singh Nagar requesting

him to revoke the suspension of the petitioner and has given the explanation regarding the charges leveled against him. Respondents have stated that inquiry against the petitioner is proceeding.

The petitioner has stated that the charges against him on the face of it are not established and the whole inquiry is malafide one. No interference can be made under Article 226 of the Constitution of India, when the inquiry is in progress.

However, the petitioner shall be at liberty to move a representation to the District Magistrate, Udham Singh Nagar for revoking the suspension order, if he so desires.

In view of the facts and circumstances of the case respondents are directed to conclude the inquiry against the petitioner within four weeks after receiving the certified copy of this order.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

10.11.2003 **(Rajesh Tandon, J.)**
Dhyani